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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 502

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

against

THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Waterman Steamship Corporation, prays that a writ of certiorari issue to review an order and judgment of the United States Court of Claims entered October 5th, 1954 granting defendant's motion to dismiss the suit for want of jurisdiction.

OPINION BELOW.

The opinion of the United States Court of Claims, printed in Appendix B hereto, *infra*, p. 15, is reported at 124 F. Supp. 638.

Jurisdiction.

The order and judgment of the United States Court of Claims sought to be reviewed was entered October 5th, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. §1255(1).

Questions Presented.[1]

Whether the Court of Claims has jurisdiction of a suit for general average contributions due from the United States, as owner of cargo, where the vessel involved was owned by the United States but bareboat chartered to a private operator as owner *pro hac vice* which operated her under a time charter to the United States, or whether the Court of Claims has been ousted of jurisdiction in such cases by the Suits in Admiralty Act (46 U. S. C. §741 *et seq.*) or the Public Vessels Act (46 U. S. C. §781 *et seq.*).

This question presents the following subsidiary questions:

(a) Whether the Suits in Admiralty Act affords a remedy against the United States, as owner of cargo, for contribution due in general average without regard to whether the vessel involved is owned or operated by or for the United States.

(b) Whether a Government owned vessel bareboat chartered from the United States to a private operator as owner *pro hac vice* is "owned" by the United States within the purview of the Suits in Admiralty Act.

(c) Whether a vessel owned by the United States, while carrying a Government cargo of sugar to the Armed

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[1] The same or related questions are presented in Petitions for Writs of Certiorari to the Court of Claims being filed in *Lykes Bros. Steamship Co.* v. *United States*, 124 F. Supp. 622; *Waterman Steamship Corporation* v. *United States*, 124 F. Supp. 622, and *United States Lines Company* v. *United States*, 124 F. Supp. 375.

Forces in Europe, is a public vessel within the meaning of the Public Vessels Act even though under bareboat charter to a private operator.

(d) If such a vessel is a public vessel, whether suit for general average contribution will lie under the Public Vessels Act or whether it must be brought under the Tucker Act.

(e) Whether a vessel operated by an owner or an owner *pro hac vice* under time charter to the United States is operated "by or for" the United States within the purview of the Suits in Admiralty Act.

Statutes Involved.

The statutory provisions involved are the Tucker Act (28 U. S. C. §1491), the Suits in Admiralty Act (46 U. S. C. §741 *et seq.*) and the Public Vessels Act (46 U. S. C. §781 *et seq.*).

Statement.

On February 25th, 1954, petitioner commenced suit against the United States under the Tucker Act, 46 U. S. C. §1491, in the Court of Claims. Its petition (R. 1-9) alleged in substance as follows:

In January, 1947, petitioner time-chartered one of its vessels to the United States for a period of 120 days and renewals thereof. Meanwhile, the Steamship *A. P. Hill*, owned by the United States, was bareboat chartered to petitioner for operation by it for its own account. Then, in November, 1947, petitioner substituted this vessel under the aforesaid time charter, as it was entitled to do.

Thereafter, in January, 1948, while operating under the time-charter, the Steamship *A. P. Hill* called at Sagua La Grande, Cuba, where the United States loaded aboard her 75,000 bags of sugar for delivery to the United States Army representatives at Bremen, West Germany.

On January 17, 1948, while leaving Sagua La Grande, the vessel accidentally stranded due to causes for which petitioner was not liable. This placed in peril the entire venture, including the Government cargo valued at $444,886. For the common benefit and to save the vessel and cargo, petitioner made and incurred sacrifices and expenditures of a general average nature totaling $63,607.62 (salvage fees, tugs, etc.). As a result, the vessel was brought off the strand and the venture was successfully completed by delivery of the cargo at Bremen.

The time charter expressly provided, among other things, that the United States would contribute with petitioner in general average to the payment of sacrifices, losses and expenses of a general average nature. In addition petitioner delivered the cargo at destination without exercising its lien for general average and it was accepted by representatives of the United States who thereby impliedly agreed to pay and became liable to pay its rightful share of the general average aforesaid. Thus the United States is under contractual obligations to contribute in general average not only by the express terms of the time charter but also by its implied undertakings after the event.

The proportionate contribution in general average due from the United States, as owner of the cargo, amounts to $33,008.06 and has not been paid.

The Government moved to dismiss the suit in the Court of Claims on the ground that the District Courts had exclusive jurisdiction under the Suits in Admiralty Act and the Public Vessels Act. R. 73

Petitioner contended that the Suits in Admiralty Act applied only to suits arising out of the ownership or operation of a vessel by or for the United States; that in view of the bareboat charter of the vessel to petitioner, which was owner *pro hac vice,* the vessel was not one "owned"

by the United States within the purview of the Act; and, finally, that the operation of the vessel by petitioner under the time charter was not operation "by or for" the United States within the meaning of the Act. Alternatively, petitioner contended that if the vessel was to be regarded as Government "owned", it was not a merchant vessel but a public vessel because she was engaged in carrying a Government owned cargo to the U. S. Armed Forces in Europe. Accordingly, as the Suits in Admiralty Act does not apply to ~~merchant~~ public vessels and, as the Public Vessels Act does not authorize suits for general average, petitioner had no recourse but to sue in the Court of Claims.

However, the Court of Claims decided against petitioner on all these points and held that its only remedy was in the District Court either under the Suits in Admiralty Act or the Public Vessels Act.

REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI.

1. By its decisions in this and other recent cases[2], the Court of Claims virtually has abdicated its jurisdiction in the whole field of maritime contracts apparently under the belief that the Suits in Admiralty Act and the Public Vessels Act together constitute an all-inclusive grant of jurisdiction in such matters to the District Courts.

Yet, in *Calmar Steamship Corp.* v. *United States,* 345 U. S. 446, this Court admonished in a footnote: "It is not to be assumed that all claims sounding in contract can form the basis of a suit under the Public Vessels Act. * * * It is not our task, of course, to torture the Suits in Admiralty

[2] In the instant case and in *Sinclair Refining Company* v. *United States,* 124 F. Supp. 628 (Ct. Cl. 1954), it was held, among other things, that the Public Vessels Act was co-extensive with the Suits in Admiralty Act as to the types of action authorized. In *Lykes Bros. Steamship Company* v. *United States,* 124 F. Supp. 622 (Ct. Cl. 1954), and *Waterman Steamship Corporation* v. *United States,* 124 F. Supp. 622 (Ct. Cl. 1954), it was held that the Suits in Admiralty Act applied without regard to whether the vessel involved was Government owned or operated.

and Public Vessels Acts into an all-inclusive grant of jurisdiction to the District Courts * * *".

2. Insofar as the Court below held that the Suits in Admiralty Act applies regardless of whether the cause of action arises out of the ownership or operation of a vessel by or for the United States, its decision is directly in conflict with decisions of the United States Court of Appeals for the Second Circuit in *The Everett Fowler,* 151 F. 2d 662, certiorari denied, 327 U. S. 804 and *C. F. Harms Co.* v. *Erie R. Co. et al.,* 167 F. 2d 562. In these cases the Tucker Act was held to confer jurisdiction of suits to enforce contractual obligations of the United States, as owner of cargo, where they did not arise out of the ownership or operation of Government vessels. In this respect the decision below is also in conflict with *Ryan Stevedoring Company* v. *United States,* 175 F. 2d 490 (2d Cir. 1949), certiorari denied, 338 U. S. 899, which approved *American President Lines* v. *United States,* 75 F. Supp. 110 (S. D. N. Y. 1947) in which it was held that: "Although the Suits in Admiralty Act refers to 'cargo owned or possessed by the United States', the Court is persuaded that it was intended to refer to actions concerning cargo which arose out of the operation of merchant vessels by the United States and not the type of action herein."

3. The question whether a vessel "owned" by the United States but under bareboat charter to a private operator comes within the purview of the Suits in Admiralty Act affects an important question of federal law which has not been, but should be, settled by this Court.

Such vessels are intended to be used by the bareboat charterers or owners *pro hac vice* in their commercial operations. So far as the Government is concerned, the need for immunity from arrest no longer exists because for all

intents and purposes such vessels are the vessels of the private operator. *United States* v. *Shea,* 152 U. S. 178. Yet, if they continue to have immunity under the Act they are a privileged class of vessels operating in private industry. Furthermore, under the Act the *in personam* liability of the United States is substituted for the vessel's *in rem* liabilities which are the obligations of the owner *pro hac vice.* It is inconceivable that Congress could have intended such a transfer of liabilities and it is submitted that Congress did not intend the Act to apply to vessels to which the United States had only bare legal title.

4. If a vessel owned by the United States but under bareboat chartered to a private operator is to be considered a vessel "owned" by the United States, then the decision below is in conflict with decisions of this Court. In *The Western Maid,* 257 U. S. 419, a vessel owned by the United States was held to be a public vessel when engaged in carrying foodstuffs to the civilian population of Europe after the First World War. The vessel here was engaged in carrying a similar cargo to the Army in Europe and in *Calmar Steamship Corporation* v. *United States, supra,* this court re-affirmed this test stating: "The United States today would be subject to suit on the facts of *The Western Maid* under the Public Vessels Act."

5. Insofar as the Court below held that the Public Vessels Act was co-extensive with the Suits in Admiralty Act as to the types of actions authorized, its decision affects an important question of federal law which has not been, but should be, settled by this Court. As already noted, this Court observed in a footnote in *Calmar Steamship Corporation* v. *United States, supra,* that: "It is not to be assumed that all claims sounding in contract can form the basis of a suit under the Public Vessels Act. The Act expressly

authorizes towage and salvage claims. We intimate no opinion as to other claims * * *".

6. Insofar as the Court below held that a vessel under time-charter to the United States is operated "for" the United States, its decision affects an important question of federal law which petitioner believes has not been but should be settled by this Court. The impression exists that this question was disposed of in *Calmar Steamship Corporation* v. *United States, supra,* and *Matson Navigation Company* v. *United States,* 284 U. S. 352. However, these cases require clarification on the point. In each the contested issue before the Court was not whether the vessel was operated "for" the Government but whether she was a "merchant vessel". Accordingly the pros and cons of the question here presented were not argued to the Court. In reaching its decision on the question of what constitutes a "merchant vessel" it seems to have assumed but not seriously considered or decided the question whether the vessel was operated "for" the United States.

Furthermore, the far-reaching and startling consequences of such a holding are such that the Court undoubtedly would have discussed the point at length if it intended its decisions to be precedents on the point.

It is of the essence of a time-charter that the owner or owner *pro hac vice,* as the case may be, remains in control of the vessel with responsibility for her operation and navigation. Such owner hires and pays the crew and is liable for their torts and the torts of the vessel. The time-charterer has the right to use the cargo space and to direct the places at which the vessel shall call to load or discharge cargo.

If the time-chartered vessel is operated "for" the United States as contemplated by the Suits in Admiralty Act then the seamen, who are employed by the owner, are

deprived of their *in rem* remedies for the payment of their wages, injuries and maintenance and cure. Collision victims, ship's chandlers, ship repairmen, suppliers and a host of others are also deprived of their *in rem* rights. More startling still is the fact that under the Suits in Admiralty Act all these may have an *in personam* suit against the charterer, the United States, on claims which are obligations of the owner and not the charterer. If such is the intent and purpose of the Act, it materially alters the nature, purpose and effect of a time-charter by transferring to the charterer many of the owner's obligations. Indeed, this very result obtained in *Burkholder* v. *United States*, 60 F. Supp. 700 (D. C. Pa. 1945) and it seems self-evident that Congress could not have intended such drastic and far-reaching consequences. If it did not, the operation of a vessel under time-charter to the United States cannot be considered to be operation "for" the United States within the meaning of the Suits in Admiralty Act.[3]

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[3] The Government contends that the Suits in Admiralty Act contemplates three categories of vessels: (1) vessels owned (2) vessels possessed (bareboat chartered to U. S.) and (3) vessels operated by or for the United States. The argument is that in Section 1 of the Act the disjunctive "or" is used between reference to vessels owned or possessed and vessels operated by or for the United States. It is also argued that the term "operated for" would be redundant if it was intended to refer only to vessels owned or possessed. Therefore, it is concluded, that vessels operated "for" the United States must refer to vessels neither owned nor possessed, *i.e.*, those under time charter to the United States.

However, the term "operated by" must refer solely to vessels in the two categories, "owned" and "possessed". Only such vessels could be operated "by" the United States and no sensible interpretation can be found which would remove the redundancy with respect to "operated by". Why then should it be necessary to seek out a meaning which will remove the asserted redundancy with respect to "operation for". Particularly is this so when the meaning sought to be ascribed to the term will produce the far-reaching and absurd consequences pointed out herein.

Webster's International Dictionary gives at least eleven connotations in which the word "for" may be used. Petitioner contends that the word "for" as used in the Suits in Admiralty Act

7. The importance of the questions presented is clear from the fact that the United States is not only one of the largest overseas shippers of cargo but perhaps one of the largest owners and charterers of ocean tonnage. As such it is constantly contracting with numerous members of the shipping industry. Hence the questions presented will continue to recur until settled by this Court.

As matters stand, if a litigant is to be safe, it is necessary to sue in Admiralty within the two year limitation for suit. Usually such suits are premature in general average matters because the Government agency has not had time to act administratively. Or, in case of complicated general average situations, which are the rule rather than the exception, completion of the General Average Statement usually is not possible within two years.[4] In these situations, if Tucker Act suits are the proper remedy, the numerous precautionary suits now being brought are unnecessarily crowding District Court calendars and causing the parties and the Government needless work and expense.

On the other hand, a litigant cannot hedge by simultaneously filing suit in the Court of Claims because that Court is without jurisdiction if another suit for the same relief is pending in another Court, 28 U. S. C. §1500. Therefore, if administrative settlement becomes impossible,

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refers only to vessels operated "for" the United States in the sense in which an agent operates "for" his principal. This would cover vessels owned or possessed by the United States but operated by agents under the various Operating Agency Agreements. While it may be said that a vessel time-chartered is operated "for" the United States, it is not so operated in the sense of agency.

[4] In this instance the General Average Statement was not completed until June 19th, 1952. The Government required nearly a year thereafter to reach an administrative determination and it then declined the claim by letter dated June 5th, 1953, asserting that she was unseaworthy in not having on board charts for local waters although a local compulsory pilot was engaged to conn her through local waters.

litigants must choose at their peril between suit in one Court or the other.

8. The decision below is believed to be erroneous on all points decided. Insofar as it rested its decision on the same grounds as in *Waterman Steamship Corporation* v. *United States,* 124 F. Supp. 622, the Court is respectfully referred to the Petition for Writ of Certiorari filed in that case for the reasons petitioner claims the decision below to be erroneous.

With respect to the points concerning the status of the vessel as a public vessel or as one operated "for" the United States, it is believed the reasons set out above demonstrate the respects in which the statutes involved have been erroneously interpreted.

Conclusion.

For the foregoing reasons, this petition for Writ of Certiorari should be granted.

Dated, New York, December 29th, 1954.

Respectfully submitted,

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APPENDIX A.

PERTINENT STATUTORY PROVISIONS.

TUCKER ACT.

28 U. S. C. §1491. CLAIMS AGAINST UNITED STATES GENERALLY.

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:

(1) Founded upon the Constitution; or

(2) Founded upon any Act of Congress; or

(3) Founded upon any regulation of an executive department; or

(4) Founded upon any express or implied contract with the United States; or

(5) For liquidated or unliquidated damages in cases not sounding in tort.

* * * * * *

28 U. S. C. §1500. PENDENCY OF CLAIMS IN OTHER COURTS.

The Court of Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

* * * * * *

28 U. S. C. §2401. TIME FOR COMMENCING ACTION AGAINST UNITED STATES.

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within

six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

• • • • • •

SUITS IN ADMIRALTY ACT.

(Act of March 9, 1920, 41 Stat. 525, Secs. 1 and 2 [46 USC, §§741 and 742])

An Act Authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel *in personam,* be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this Act shall not apply to the Panama Railroad Company.

Sec. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel *in personam* may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. • • •.

Public Vessels Act.

(46 U. S. C. §781 *et seq.*)

46 U. S. C. §781. Libel in Admiralty Against or Impleader of United States.

A libel *in personam* in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided,* That the cause of action arose after the 6th day of April, 1920.

APPENDIX B.

OPINION BELOW.

LITTLETON, *Judge,* delivered the opinion of the court:

This case comes before the court on defendant's motion to dismiss plaintiff's petition. The question presented is whether a suit for general average contribution is maintainable under the Tucker Act, 28 U. S. C. 1491, as alleged by plaintiff, or whether its alleged cause of action is cognizable under the Suits in Admiralty Act, 46 U. S. C. 741 *et seq.* which vests exclusive jurisdiction in the federal district courts.

The vessel involved, SS. *A. P. Hill,* was owned by the United States, bareboat chartered to plaintiff and then time chartered by plaintiff to the Government. While carrying Government cargo under this time charter, the ship became stranded with the expenses of rescue for both vessel and cargo being borne by plaintiff. Plaintiff now sues to recover from defendant its general average contribution toward the rescue expenditures.

Defendant has moved to dismiss contending plaintiff's remedy, if any, lies in the district court under the Suits in Admiralty Act.

Plaintiff asserts that the Suits in Admiralty Act is inapplicable stating: (1) That the cause of action does not arise out of the ownership or operation of a vessel by or for the United States, (2) that the "ownership" required contemplates more than technical legal title held by the Government and that if such ownership is significant, then the vessel was not a merchant vessel and (3) that where the cause of action relates to cargo, as general average contribution does, it must arise out of the ownership or operation of a vessel by or for the Government.

We hold that plaintiff's remedy, if any, lies in the district court under the Suits in Admiralty Act on the basis of our decision in *Lykes Bros. Steamship Co., Inc.,* No. 488-53 and

Waterman Steamship Corp., No. 31-54, this day decided,[1] and for the additional reasons hereinafter stated. Therefore, defendant's motion to dismiss must be granted.

Here the vessel and cargo were Government owned and any claim against the United States relative to the vessel or the cargo comes within the express language of the Act. Section 741 states that "No vessel owned by the United States * * *, and no cargo owned or possessed by the United States * * * shall * * * be subject to arrest or seizure." Section 742 provides for a libel in personam in the district court "provided that such vessel is employed as a merchant vessel." Since there is nothing present in the Act to indicate otherwise, we interpret the term "owned" to mean just that. The SS. *A. P. Hill* was operated by plaintiff as a merchant vessel engaged in transporting goods for hire and the fact that Government cargo was carried does not negate her employment as a merchant vessel within the meaning of the Suits in Admiralty Act. *Calmar S.S. Corp.* v. *United States*, 345 U. S. 446.[2]

Plaintiff contends that if any significance is given to the fact that legal title vests in the Government it must then be held that the ship was not a merchant vessel but a public vessel. Even if this were so (and we believe it is not) then plaintiff's remedy would still remain in the district court under the Public Vessels Act, 46 U. S. C. 781 *et seq.* See *Sinclair Refining Co.* v. *United States*, No. 49799, decided this date.

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[1] These cases like the present one involve claims for general average contribution by Government cargo, but the vessels involved were privately owned and the Government cargoes were carried under bills of lading or space charters as contrasted with our situation here where a Government-owned vessel, bareboat chartered to plaintiff, operated by plaintiff under a time charter to the Government and carrying Government cargo, is involved.

[2] Plaintiff argues that the vessel was not operated for the United States. Although we believe that the vessel was so operated under the time charter, we find such requirement immaterial under the Act in view of the fact that the vessel was owned by the Government.

Nor are the decisions of the district court in the second circuit[3] relied on by plaintiff in point here. Those cases involving Government cargo on privately owned and operated vessels not time chartered to the Government rest their decisions, ruling that suits with respect to Government cargo are maintainable under the Tucker Act, on the premise that such suits lie under the Suits in Admiralty Act only if a vessel owned or operated by or for the United States is involved. Here the Government cargo was carried on a vessel *owned* by the United States.

Even if we disregard the fact that legal title vests with the Government, as plaintiff indicated we should do, and consider the plaintiff as the owner under the bareboat charter, i. e., owner *pro hac vice,* our result would remain the same. For if such is the case, then we find no material distinction between the situation in the *Calmar* case, *supra,* wherein a privately owned vessel, voyage chartered to the Government and carrying Government cargo, was held to come within the purview of the Suits in Admiralty Act and the situation in this case wherein plaintiff, as owner *pro hac vice,* operated the vessel under a time charter to the Government and carried Government cargo. See also *Field* v. *United States,* 125 C. Cls. 559, cert. den. 346 U. S. 922, where the situation in respect to the vessels involved was indentical with the situation here in so far as the vessel is concerned and the Suits in Admiralty Act was held to be applicable.

Defendant's motion to dismiss is granted and plaintiff's petition is dismissed. It is so ordered.

LARAMORE, *Judge;* MADDEN, *Judge;* WHITAKER, *Judge;* and JONES, *Chief Judge,* concur.

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[3] *American President Lines, Ltd.* v. *United States,* 75 F. Supp. 110; *States Marine Corp. of Del.* v. *United States,* 120 F. Supp. 585; *Prudential Steamship Corp.* v. *United States,* 122 F. Supp. 164.

APPENDIX C.

SINCLAIR REFINING COMPANY *v.* THE UNITED STATES

(Incorporated by reference in Opinion Below)

HERBERT M. LORD for Plaintiff. BURLINGHAM, HUPPER & KENNEDY were on the briefs.

LEAVENWORTH COLBY, with whom was Assistant Attorney General WARREN E. BURGER, for Defendant.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

WHITAKER, *Judge,* delivered the opinion of the court:

This case is before us on defendant's motion for summary judgment, on the ground that there is no genuine issue as to any material fact, and that plaintiff's action is based on that character of maritime contracts of which, it is said, the United States District Courts have exclusive jurisdiction.

Plaintiff entered into charter parties with the defendant for the use of its tankers, the *Sheldon Clark,* the *Sinclair Rubilene,* the *E. R. Kemp,* the *L. V. Stanford,* the *Joseph M. Cudahy,* the *Patrick J. Hurley,* the *Daniel Pierce,* the *E. W. Sinclair,* the *Sinclair Superflame,* and the *Virginia Sinclair.* The charter parties relative to the tankers *Sheldon Clark, Sinclair Rubilene, E. R. Kemp, L. V. Stanford, Joseph M. Cudahy, Patrick J. Hurley, E. W. Sinclair, Sinclair Superflame,* and *Virginia Sinclair* were designated "Warshipoiltime, Form No. 102." Such a charter party was also entered into relative to the ship *Daniel Pierce.* This charter party was entered into on April 20, 1942. Later, on September 1, 1944, plaintiff and defendant entered into another charter party relative to the *Daniel Pierce,* known as "Warshipdemise (Rev.), Form No. 103 (Rev.)."

The charter parties "Warshipoiltime" were time charters. On them plaintiff sues in its first cause of action, with respect to the *Sheldon Clark,* for $1,309.97, "representing the value of pending war risk insurance on the date of delivery of said vessel under said charter."

With respect to the *Sinclair Rubilene* plaintiff sues in its second cause of action for $41,682.54 "on account of adjusted credits for war risk insurance and crew war bonuses."

With reference to the *E. R. Kemp,* in its third cause of action, it sues for $404.79 "for pending war risk insurance on the date of delivery of the said vessel under said charter."

With respect to the *L. V. Stanford,* it sues in its fourth cause of action for $29,647.36 "on account of adjusted credits for war risk insurance."

With respect to the *Joseph M. Cudahy* it sues in its fifth cause of action for $35,772.98 "on account of adjusted credits for war risk insurance and charter hire."

With respect to the *Patrick J. Hurley,* in its sixth cause of action, it sues for $15,525.14 "on account of adjusted credits for war risk insurance and crew war bonuses."

With respect to the Warshipoiltime charter party of April 20, 1942, with respect to the *Daniel Pierce,* in its seventh cause of action it sues for $9,363.82 "on account of adjusted credits for war risk insurance, crew war bonuses, charter hire, wages and subsistence."

With respect to the *Virginia Sinclair,* it sues in its fourteenth cause of action for $3,548.30 "representing adjustments of hire and final charter hire, after crediting defendant with certain periods of off-hire."

In addition to its claim mentioned above with respect to the *Daniel Pierce,* plaintiff also sues in its eighth cause of action with respect to this ship for the sum of $2,457.17 "on account of off-hire adjustments."

With respect to the *Sinclair Rubilene,* the plaintiff sues in its eleventh cause of action for $61,973.81, which amount it alleges defendant wrongfully withheld, representing one month's hire on account of alleged unsettled off-hire credits.

With respect to the *E. W. Sinclair,* in its twelfth cause of action plaintiff sues for $59,431.39, which amount it alleged defendant wrongfully withheld, representing one month's hire on account of alleged unsettled off-hire credits.

With respect to the *Sinclair Superflame,* in its thirteenth cause of action, plaintiff sues for $32,283.41, which amount it alleges defendant wrongfully withheld, representing one month's hire on account of alleged unsettled off-hire credits.

Also, with respect to the *Daniel Pierce,* plaintiff sues in its ninth cause of action on the charter party entered into September 1, 1944, known as "Warshipdemise (Rev.), Form No. 103 (Rev.)," under which it is alleged plaintiff and defendant entered into a bareboat charter, which provided that the charterer before redelivery would restore the vessel to "at least as good condition and class as upon delivery," and that all "outfit, equipment, furniture, furnishings, appliances, spare and replaced parts" belonging to said vessel would be returned to plaintiff on redelivery and that "any such items lost, destroyed, damaged, or so worn in service as to be unfit for use" in plaintiff's service "shall be replaced and made good by the charterer." It is alleged that upon redelivery of the vessel, plaintiff determined that it was necessary to make repairs costing $186,080.44 in order to restore the vessel into substantially the condition existing prior to delivery under the charter. It sues for this amount.

It also sues in its tenth cause of action with respect to the *Daniel Pierce* for $5,000, to which it alleges it is entitled on account of "an adjustment of inventory".

Finally, in its fifteenth cause of action plaintiff sues for $4,200 "for liquidating the business and accounts of plaintiff's tankers *Albert E. Watts, E. R. Kemp, E. W. Sinclair, Flagship Sinco, L. V. Stanford, Sheldon Clark, H. C. Sinclair, Sinclair Opaline, Sinclair Rubilene,* and *Sinclair Superflame*".

The causes of action alleging amounts due under war risk insurance policies are either governed by our decision rendered this day in *United States Lines Company* v. *United States,* C. Cls. No. 140-53, or by our decision this day

rendered in *Polar Compania De Navegacion, Ltda., as owner of the steamship Penelopi* v. *The United States,* C. Cls. No. 54-52. The causes of action for crew war bonuses, charter hire, and wages and subsistence under the Warshipoiltime charters, and also the causes of action based on off-hire credits are governed by the latter decision. Also, the sum claimed in the fifteenth cause of action "for liquidating the business and accounts of plaintiff's tankers," which it names, is governed by our decision in *Polar Compania De Navegacion, Ltda., as owner of the steamship Penelopi* v. *United States,* this day rendered.

It remains only to consider the charter party entered into on September 1, 1944, designated "Warshipdemise (Rev.), Form No. 103 (Rev.)," relative to the tanker *Daniel Pierce.* This was a bareboat charter. Under it the vessel was manned by a crew furnished by defendant and under defendant's exclusive control and direction. Although plaintiff alleged that the vessel was chartered "for an agreed rate of hire for use as a public vessel of the United States," the use actually made of this vessel by the defendant is not alleged. Whether or not it was used as a merchant vessel, we do not know, and, therefore, under the Supreme Court's decision in *Matson Navigation Co.* v. *United States,* 284 U. S. 352, the necessary facts are not alleged to confer jurisdiction on this court.

This case might be disposed of on this ground; but even if we assume she was chartered for or engaged in public use, as plaintiff contends, it would not necessarily follow that she was not employed as a "merchant vessel" within the meaning of the Suits in Admiralty Act (41 Stat. 525, 46 U. S. C. sec. 741), because that Act specifically covers, *inter alia,* Government owned or operated vessels, which are admittedly public vessels in public use, as those terms are ordinarily understood. It is clear from the Suits in Admiralty Act, *supra,* that public vessels can be employed as "merchant vessels" within the meaning of that Act. The Public Vessels Act (43 Stat. 1112; 46 U. S. C. sec. 781, *et seq.*), the sister statute of the Suits in Admiralty Act, *supra,* covers those public vessels not employed as "mer-

chant vessels" within the meaning of the Suits in Admiralty Act. Consequently, the question is whether the vessel was employed as a "merchant vessel" within the meaning of the Suits in Admiralty Act, *supra,* or as a "public vessel" within the meaning of the Public Vessels Act, *supra.* We do not decide this question for the reasons about to be given.

Under the Public Vessels Act, suit may be brought against the United States "for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States." Section 2 of the Act provides: "* * * such suits shall be brought in the District Court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States."

In determining whether or not a suit on a contract between the owner of the vessel and the United States under a bareboat charter comes within the terms of this statute, we should bear in mind the following concept of actions in admiralty as expressed by the Supreme Court in *Canadian Aviator, Ltd.* v. *United States,* 324 U. S. 215, 224:

> The use of the phrase "caused by a public vessel" constitutes an adoption by Congress of the customary legal terminology of the admiralty law which refers to the vessel as causing the harm although the actual cause is the negligence of the personnel in the operation of the ship. Such personification of the vessel, treating it as a juristic person whose acts and omissions, although brought about by her personnel, are personal acts of the ship for which, as a juristic person, she is legally responsible, has long been recognized by this Court. [Citing authorities.]

In that case, plaintiff's vessel, the *Cavelier,* was being guided by and was following directly astern the *YP 249,* a Government vessel, in accordance with orders of the Government. While so doing, it "struck a submerged wreck and sustained serious damages." The question was whether or

not these damages were caused by a public vessel of the United States, to wit, *YP 249*. It was held that it was, since it was the juristic person which had caused plaintiff's vessel to strike this submerged wreck, although it itself had not collided with plaintiff's vessel.

Later, in *American Stevedores, Inc.* v. *Porello, et al.*, 330 U. S. 446, the Supreme Court held that the Public Vessels Act covered a claim by a longshoreman on account of injuries sustained while working in the hold of the U. S. S. *Thomas Stone*, a public vessel of the United States. The court intimated, although it did not so decide, that the Public Vessels Act was intended to give the same relief against the Government with respect to public vessels as was given against it by the Suits in Admiralty Act with reference to merchant vessels owned or operated by or for the United States. In its opinion the court quoted a letter from the Attorney General, which was incorporated by a Congressional Committee reporting on a companion bill, reading in part as follows:

> The proposed bill intends to give the same relief against the Government for damages caused * * * by its public vessels * * * as is now given against the United States in the operation of its merchant vessels, as provided by the suits in admiralty act of March 9, 1920.

In *Calmar Steamship Corp.* v. *United States*, 345 U. S. 446, the question was whether or not a privately owned vessel chartered to the United States under a time charter and carrying munitions of war was a merchant vessel. The Court held that it was. In the course of its discussion the Supreme Court said, beginning on page 454:

> * * * Nor is the problem the same when a vessel owned, absolutely or *pro hac vice*, by the United States is involved as when one privately owned and operated is in question. In the former case the consequences of holding that a vessel was not "employed as a merchant vessel" is, in the great number of

> instances, that the libel is dismissed under the Suits in Admiralty Act *only to be heard under the Public Vessels Act in the same admiralty court.* When as here the vessel is privately owned and operated, however, to hold that she was not employed as a merchant vessel is to relegate the libelant, on a contract claim substantial enough not to be cognizable on the law side under the Tucker Act, 28 U. S. C. (Supp. III) sec. 1346, to the Court of Claims. Yet the District Courts are, in our judicial system, the accustomed forum in matters of admiralty; everything else being equal, no efforts should be made to divert this type of litigation to judges less experienced in admiralty. *The Suits in Admiralty Act and the Public Vessels Act are not to be regarded as discrete enactments treating related situations in isolation. Hence there is no reason why a claim arising in connection with a vessel bareboat chartered by the United States and carrying war material should be heard by a District Court, while a like claim relating to a vessel chartered as was the Portmar and carrying the same type of cargo, should require an action to be filed in the Court of Claims.* [Italics ours.]

Of course this case does not decide our problem, but it clearly intimates that if the vessel is a merchant vessel, the district courts have jurisdiction of actions concerning it under the Suits in Admiralty Act, *supra,* and if it is a public vessel, the district courts have jurisdiction under the Public Vessels Act, *supra.*

However, in the *Calmar* case, in note 8 on page 456, the court said:

> It is not to be assumed that all claims sounding in contract can form the basis of a suit under the Public Vessels Act. The Act expressly authorizes towage and salvage claims. We intimate no opinion as to other claims, and do not suggest that all or any of the causes of action in this very suit would or would not qualify under the Public Vessels Act. There are cases

> in which jurisdiction over contract claims other than towage or salvage has been assumed. *Thomason* v. *United States,* 184 F. 2d 105; *United States* v. *Loyola,* 161 F. 2d 126. But cf. *Eastern S. S. Lines* v. *United States,* 187 F. 2d 956. All that matters for our purpose is that there is a class of cases, no matter how narrow, which, if the cargo test of jurisdiction is applied, will be heard by the District Courts in admiralty when a vessel owned by the United States is involved, and in the Court of Claims when the vessel was chartered as was the *Portmar.* It is not our task, of course, to torture the Suits in Admiralty and Public Vessels Acts into an all-inclusive grant of jurisdiction to the District Courts. But equivocal language should be construed so as to secure the most harmonious results.

The Ninth Circuit in *United States* v. *Loyola,* 161 F. 2d 126, held that a seaman was entitled to recover under the Public Vessels Act on a contract claim for his maintenance and cure of pulmonary tuberculosis.

In *Thomason* v. *United States,* 184 F. 2d 105, the same court held the United States liable under the Public Vessels Act for overtime and bonuses claimed by a seaman. In this case the court said, at page 107:

> The sustaining of jurisdiction under the Public Vessels Act in other than collision cases is in accord with the evident purpose of Congress to provide for the adjudication of seaman controversies in the admiralty courts. Pursuant to that purpose, Congress has passed *two complementary jurisdictional statutes, the Suits in Admiralty Act for cases where the public vessel involved is employed as a merchant vessel, and the Public Vessels Act where the vessel is employed exclusively as a public vessel.* It is a rational interpretation to say that in providing a forum for the adjudication of maritime claims uniformity was sought. To hold that seamen's wage claims are not justiciable under the Public Vessels

> Act would not diminish the liability of the United States for such claims, but would merely transfer the adjudication of all such claims to jurisdiction under the Tucker Act, thereby defeating the policy of uniformity. Cf. American Stevedores, Inc. *v.* Porello, 1947, 330 U. S. 446, 453, 67 S. Ct. 847, 91 L. Ed. 1011. [Italics ours.]

But, *Eastern SS. Lines* v. *United States,* 187 F. 2d 956, decided by the First Circuit, appears to be in conflict with the Ninth Circuit decisions. In that case the shipowner sued for $5,000,000, the estimated cost of reconditioning its vessel, the SS. *Acadia,* which the United States had used for the transportation of troops and as a hospital ship under a bareboat charter. The court said that such a claim was not covered by the Public Vessels Act (page 959).

Admittedly, the district courts have exclusive jurisdiction under the Suits in Admiralty Act of claims for compensation for the use of merchant vessels under time charters to the United States. *Matson Navigation Co.* v. *United States, supra; Calmar SS. Corp.* v. *United States, supra.* We can conceive of no reason why the same rule should not be applied in the case of a bareboat charter. The only difference in the two is that in one case a shipowner mans the vessel, and in the other the Government mans it. This conceivably might make a difference in a claim arising out of the operation of the vessel, but we can see no reason for a difference with respect to a claim arising out of a contract for the use of the vessel. It would be an anomaly to say that the owner of a vessel had to sue the United States in an admiralty court on a time charter, but it could not sue there on a bareboat charter.

So that, whether this action is under the Public Vessels Act or the Suits in Admiralty Act, exclusive jurisdiction lies in the district court.

This interpretation is in accord with the general legislative policy of conferring exclusive jurisdiction upon the district courts of maritime causes of action against the United States, the accustomed forum in matters of

admiralty, and is in harmony with the principle of the cases cited above.

Defendant's motion for summary judgment is granted, and plaintiff's petition is dismissed.

It is so ordered.

LARAMORE, Judge; MADDEN, Judge; LITTLETON, Judge; and JONES, Chief Judge, concur.

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 502

WATERMAN STEAMSHIP CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This cause resembles No. 501, *Waterman Steamship Corporation* v. *United States,* to which we respectfully make reference, to the extent that it also presents a suit for general average with respect to government owned cargo. The facts in this case, however, present the additional feature that the vessel, on which the government cargo was being carried, was owned by the United States, bareboat chartered out to petitioner, and time chartered back by the United States (Pet. 15).

In these circumstances exclusive jurisdiction is vested in the district court not merely under

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the cargo clause of the Suits in Admiralty Act, but also on the additional ground that the vessel was owned by and operated for the United States. *Field* v. *United States,* 125 C. Cls. 559, certiorari denied, 346 U. S. 922. The decisions of this Court in *Calmar S. S. Corp.* v. *United States,* 345 U. S. 446, 454, 456 and *Matson Navigation Co.* v. *United States,* 284 U. S. 352, 357, 358, establish conclusively that a vessel time chartered by the United States is *operated for* the United States and thus within the scope of the Suits in Admiralty Act.[1] Admiralty jurisdiction of this case, accordingly, is based not only upon the cargo clause, but on additional factors with respect to which this Court has already ruled authoritatively.

Petitioner's alternative argument that the nature of the vessel's operation constituted it a

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[1] Petitioner's apprehension with respect to the substitution of the in personam liability of the United States for the in rem liability of the vessel and her owners (Pet. 7, 8–9) presents no basis for departing from the purpose and language of the Act. The provision accepting in personam liability for claims against vessels "operated for" the United States was intended to provide seamen and others full protection while preventing damage to the national interest by interference with the operations of such vessels by in rem proceedings. *Burkholder* v. *United States,* 60 F. Supp. 700, 703 (E. D. Pa.); *Pineiro* v. *United States,* 65 F. Supp. 191 (N. D. Calif.); *Epstein* v. *United States,* 86 F. Supp. 740 (S. D. N. Y.); *A. H. Bull SS Co.* v. *United States,* 105 F. Supp. 474, 479 (S. D. N. Y.). The time charter may, of course, provide indemnity from the owner in addition to the normal right to reimbursements.

public vessel rather than a merchant vessel (Pet. 5, 7) raises precisely the issue which was before this Court in *Calmar Steamship Corp.* v. *United States,* 345 U. S. 446. There are here no new circumstances or other reasons for a reexamination of that issue in the present case.

CONCLUSION

For the above reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 502.

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

against

THE UNITED STATES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

PETITIONER'S REPLY.

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WATERMAN STEAMSHIP CORPORATION,

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v.

THE UNITED STATES,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

PETITIONER'S REPLY.

As the Government points out, this cause resembles No. 501, *Waterman Steamship Corporation* v. *United States,* and to that extent reference is made to Petitioner's Reply in that case for its position regarding the recent decision of the Court of Appeals, Second Circuit, in *Prudential Steamship Corporation* v. *United States* and *States Marine Corporation* v. *United States,* decided February 24, 1955 and printed in Appendix to Government's Brief in No. 501.

This cause however presents additional features and important questions of Federal law not involved in No. 501. These stem from the fact that the vessel was owned by the United States, bareboat chartered to Petitioner and time-chartered back to the United States.

The first of these is the alternative question whether the vessel was a public vessel. As a vessel "owned" by the

United States and carrying an Army cargo to Europe it was a "public vessel" within the definition of *The Western Maid,* 257 U. S. 419. Of that definition this Court stated in *Calmar Steamship Corporation* v. *United States,* 345 U. S. 446: "The United States today would be subject to suit on the facts of *The Western Maid* under the Public Vessels Act." Government counsel miss the point when they state in the Brief in Opposition that this issue was decided in the *Calmar* case, *supra.* In that case the vessel was "privately owned" and chartered to the Government. Here the vessel is "Government owned", bareboat chartered to Petitioner and time-chartered back to the Government.

The next additional question is whether a vessel time-chartered to the United States is operated "for" it within the meaning of the Suits in Admiralty Act. The importance of this question is emphasized by the footnote on page 2 of the Brief in Opposition. In the Petition it was pointed out that if the Suits in Admiralty Act applied to vessels time-chartered to the United States, one effect of the Act would be to work a transfer of substantive liabilities of the private shipowner to the United States, as time-charterer. Government counsel apparently concede not only that this would be the result of the Act in such cases but they say this was the intention. However, this result pertains only if the Act applies to time-chartered vessels and the question is whether it does. It speaks of vessels operated "for" the United States. If this includes time-chartered vessels then the Act applies and transfers many of the owner's liabilities to the charterer and thus destroys or nullifies the nature, purpose and intent of such charters. This is so incongruous as to render it inconceivable that Congress could have had any such intention or purpose.

Conclusion.

The Petition should be granted.

Dated: New York, March 15, 1955.

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